2021-2022 Legislative Memorandum

Subject:  The New York For All Act - A.2328-A (Reyes) / S.3076-A (Salazar)

Position:  SUPPORT

Immigrant New Yorkers make invaluable contributions to our communities, economy, and culture. Yet many of New York's 4.4 million foreign-born residents live in fear of being arrested, detained, and deported by U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP). Underlying that fear is the fact that ICE has built its notoriously cruel enforcement infrastructure on the backs of state and local authorities, sending the message to immigrants that participating in local government programs or even sending a child to school could be the first step on a path to deportation.

Collaboration between ICE and local authorities has disastrous consequences. When people believe that local law enforcement is working hand-in-hand with immigration authorities, it divides communities, erodes trust in government administration, impedes public health, and makes everyone less safe. Having learned these lessons, several localities in New York have already put limits on how government employees can interact with immigration authorities, and New York state law prohibits law enforcement from holding people past their release date at the request of ICE. Yet across New York State, a loose patchwork of local laws and policies about how officers and other employees can or cannot engage in immigration enforcement – including many jurisdictions with no policies at all – sends confusing signals to local authorities and keeps immigrant New Yorkers in fear.

As a new presidential administration takes office, there is renewed hope that the worst abuses of the Trump era will end and long-needed reforms to the federal immigration system will begin to take shape. But ICE's cruelty predates the Trump administration and won't go away with the end of his presidency. While lawmakers in Washington debate how to reform our country's immigration laws, New York must do its part to stand up for immigrants by refusing to abet the arrest and deportation of our friends and neighbors.

The New York For All Act follows the lead of other states and cities by drawing sensible limits between local government and immigration enforcement. The bill would prohibit the use of government resources for immigration enforcement, restrict the disclosure of sensitive information to ICE and CBP, prohibit 287(g) agreements, and make clear that ICE cannot access non-public areas of government property without a judicial warrant. The bill would also require local jails to inform people of their rights when interacting with ICE,
including their right to decline an interview and seek the assistance of counsel. Clear reporting requirements and oversight by the New York Attorney General would help ensure that the rules are actually followed. The NYCLU calls on lawmakers to act now to preserve New York’s autonomy and protect its immigrant communities.

**ICE has built its deportation machine on the backs of state and local government.**

The anti-immigrant policies of the Trump administration shined a light on how cruel and dehumanizing our immigration system can be. But while President Trump may have supercharged the immigration detention and deportation regime, the machinery he used to do so was in place when he arrived. Legislative and policy changes put in place over several decades – under the leadership of both political parties – have created a civil immigration system that operates more like the criminal legal system, tearing people away from their families and placing them in county jails and private prisons for years while they navigate a byzantine immigration court process. In 1995, fewer than 8,000 people were held in immigration detention in the United States.1 By 2019, up to 56,000 people were detained on a given day.2 The first three years of the Trump administration brought 40 new detention centers online, which held more than a quarter of the people in detained by ICE.3

ICE does not operate this system alone. Rather, it depends on the institutionalized assistance of state and local authorities to share sensitive information, lend resources, and participate directly in detecting and arresting people for federal immigration violations. Through a program known as Secure Communities, biometric information collected from local law enforcement at the time of an arrest – no matter how minor the alleged offense, or whether charges are pursued – is automatically and immediately shared with the federal government and made available to ICE.4 ICE acts on these alerts by sending requests to jails and local law enforcement, asking that people be kept in custody beyond their legal release date and that ICE be notified of any pending release so they can be present to take custody.5 ICE has issued more than 2.5 million detainer requests to local law enforcement since its creation in 2003, with more than 575,000 of those issued during the Trump era.6

Secure Communities and detainers represent just the tip of the iceberg for state and local collusion with immigration authorities. The notorious 287(g) program – which came to New York for the first time under Trump with the enrollment of the Rensselaer County Sheriff’s

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2 Id.
3 Id.
Secure Communities was briefly replaced by the Priority Enforcement Program (PEP) from 2015 to 2017, but automatic sharing of biometric data with immigration authorities remained a central component.
Office in 2018 – goes further by deputizing local officers to perform the functions of immigration officers, under the direct supervision of ICE. State and local authorities also collaborate with ICE and CBP in less formal ways. Records obtained by the NYCLU through Freedom of Information Act (FOIA) requests illustrate how police in counties near the Canadian border profile drivers and call CBP after pulling over someone they suspect is foreign-born, and call on CBP officers to act as translators.

ICE leans heavily on this type of collusion, and officials in New York have at times pushed back. In 2011, Governor Andrew Cuomo attempted to withdraw from Secure Communities, concluding that it undermined local law enforcement. However, ICE subsequently made clear that states could not decline to participate in Secure Communities if they shared data with any federal entity. New York City passed laws in 2014 defanging ICE detainer requests unless accompanied by a judicial warrant, and in 2017 prohibited use of city resources for immigration enforcement. Westchester County passed into law similar restrictions in 2018, and other cities in New York have resolutions condemning collaboration with immigration authorities.

Courts have also stepped in to curtail some of the more egregious types of collaboration. In 2018, in a lawsuit brought by the NYCLU, the Second Department Appellate Division held that police and peace officers have no authority under state law to make immigration arrests, including by holding people at ICE’s request who would otherwise be released. The New York Attorney General’s office has made clear that this restriction applies even where a 287(g) agreement is in place. However, the NYCLU continues to learn of local law enforcement in parts of the state unlawfully holding people for ICE, and the judicial bar on immigration arrests does not prevent police from sharing details about a person’s release with ICE that effectively facilitate their transfer to ICE custody. In many parts of the state, law enforcement continue to work with immigration authorities unchecked.

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14 See, e.g., Rochester City Council Resolution 2017-5, Resolution affirming that Rochester is a Sanctuary City committed to equal rights for all, available at https://www.cityofrochester.gov/councilproceedings/.
Refusing to abet immigration enforcement benefits all New Yorkers.

The harms of state and local collusion with ICE – and the benefits of ending it – are many. Law enforcement collusion with ICE compounds the harms that over-policing has had on Black and Brown communities, and knowing that local government can share information or work directly with ICE dissuades people who lack proof of lawful immigration status or have undocumented immigrants in their family from engaging with government services. All levels of government rely on public trust and credibility to function effectively. State and local agencies of all kinds depend on the willingness of residents to provide necessary information, come forward with issues and concerns, and communicate openly with public servants performing their duties. When large segments of the population feel unsafe interacting with their government, the core missions of those agencies are undermined, negatively affecting the entire community.

The chilling effect imposed by local collusion with ICE impacts everything from schools to public safety to health care. Amid the COVID-19 pandemic, where local governments must carry out testing and vaccination programs, the consequences for public health are particularly dangerous. Researchers have previously documented how assumptions about police collusion with ICE and fear over how their information will be used have served as barriers to immigrants’ access to health care, and fear of deportation has loomed large as vaccination efforts get underway, despite some assurances by health officials. As long as state and local governments are perceived as being in league with immigration authorities, such fears are certain to linger and hamper efforts to recover from the COVID-19 pandemic.

Statewide prohibitions on working with ICE can help mitigate these harms. They will also make New York more prosperous, without compromising public safety. Statistical analyses show that counties that restrict interaction with ICE have lower crime rates while also enjoying higher median household incomes, lower unemployment, and lower poverty. A recent comparative study that looked at counties before and after implementing such policies found that they decreased deportations spurred by local arrests while prompting no increase in crime. Keeping state and local authorities out of immigration enforcement doesn’t just benefit immigrants – it benefits everyone.

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18 Rowalda Abdelaziz, *Fear of Deportation is Keeping Undocumented Immigrants from Seeking Vaccination*, HuffPost (Jan. 19, 2021), [https://www.huffpost.com/entry/undocumented-immigrants-deportation-coronavirus-vaccine_n_6006f6a2c5b6df63a91a1817](https://www.huffpost.com/entry/undocumented-immigrants-deportation-coronavirus-vaccine_n_6006f6a2c5b6df63a91a1817).


20 See David K. Hausman, Bill Lane Center for the American West, Stanford University Department of Political Science, *Sanctuary policies reduce deportations without increasing crime*, Sep. 11, 2020, available at [https://www.pnas.org/content/117/44/27262#sec-6](https://www.pnas.org/content/117/44/27262#sec-6).
New York For All is the next step New York must take to stand up for immigrants.

The legislature has taken recent strides to protect immigrant New Yorkers. In 2019, lawmakers passed landmark laws to provide tuition assistance to undocumented New Yorkers and make driver’s licenses available regardless of immigration status. In 2020, New York took another step forward by becoming the latest state to bar ICE from making arrests at its state courthouses. These measures have helped make New York a leader in welcoming its immigrant residents. But in critical ways, New York still lags behind.

In recent years, California and Washington State have passed comprehensive legislation to restrict authorities within those states from collaborating with ICE, and other states like Illinois and Vermont have enacted narrower limitations of their own; Oregon first enacted a prohibition using public resources for immigration enforcement in 1987. While Governor Cuomo took the limited step of issuing an executive orders in 2017 and 2018 that limit certain interactions with ICE and immigration enforcement on certain state property, those orders do not reach local authorities.

The New York For All Act would build on the legislature’s recent reforms and bring the state in line with others that have recognized the benefits of keeping out of immigration enforcement, and apply the same policies consistently across the state. While these measures cannot eliminate the harms ICE has wrought on New York communities, they will ensure that New York does not abet them.

Conclusion.

New York has in many ways been at the forefront of a movement by states to do their part to welcome and protect immigrants, but there is still much more to do. New York must follow the lead of other U.S. states and cities by passing the New York For All Act and making certain that it won’t entangle itself in the business of immigration enforcement.

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